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No. 83-65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LEASEWAY TRANSPORTATION CORP. and
RAYMOND J. REHOR,

Petitioners,

v.

UNITED STATES OF AMERICA and
JAMES SIMEO,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF OF PETITIONERS, LEASEWAY TRANSPORTATION CORP. and RAYMOND J. REHOR, IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioners Leaseway Transportation Corp. ("Leaseway") and Raymond J. Rehor submit this reply brief in support of their petition for a writ of certiorari.

The argument that compelling reasons of public policy require that protection against random disclosure be accorded to Leaseway's internal audit reports ("IARs"), stands essentially unrefuted.

In its brief in opposition to the petition for writ of certiorari, the government did not challenge such reasons of public policy but chose to relegate a discussion of them to the end of its brief. In the petition for writ of certiorari, the petitioners explained why compelling reasons of public policy require protection of IARs. Pet. at 8-14. 1/ Rather than address the

1/ These reasons were again emphasized in the four amicus curiae briefs filed in support of the petition for writ of certiorari. See amicus curiae briefs of: Standard Oil Company at 12-16; Kroger Co. at 18-19; Pickands Mather & Co. at 4-6; White Consolidated at 2-3. Indeed, the interest and support expressed in the amicus curiae briefs underscore the fact that the issue presented in this case is an extremely significant issue of national importance, which should be decided by the Court at this time.

merits of these compelling reasons of public policy, the government limited its response to two conclusionary comments to support its general denial that public policy reasons require protection of IARs. 2/

2/ The government stated:

> Nor would the limited societal interest served by any resulting "enhancement of corporate efficiency" (Pet. 10) or encouragement of inquiry by auditors into a corporation's compliance with the law (Pet. 8) warrant judicial creation of an accountant's privilege from congressionally authorized investigations with respect to internal audit reports.

Br. In Opp. at 13, n. 9. The government also stated that petitioners:

> [H]ave not offered the "weighty and legitimate competing interests" (United States v. Nixon, 418 U.S. 683, 709 (1974)) necessary to offset the manifest public need for the efficient and effective enforcement of the Internal Revenue Code.

Br. In Opp. at 14. For our response to the government's unwarranted assertion that petitioners would have this Court create an "accountant's privilege" for IARs, see pages 5 & 6, below.

Nowhere did the government provide a reason of public policy to support why the Internal Revenue Service ("IRS") should be entitled to summon IARs without apparent limits.

If this Court does not grant the petition, then the IRS's newly adopted policy of obtaining IARs during the course of a routine tax audit will be preserved 3/ and the undisputed public benefits derived from the use of IARs will be lost. See Pet. at 12-14. 4/

3/ Nowhere did the government deny that IRS has adopted such a new policy, which will remain intact if this Court denies the petition. See Internal Revenue Manuel (Audit) (CCH) Case Managers Handbook Ch. 600 § 610 (1980).

4/ This Court has emphasized that it has upheld the IRS "summons authority ... absent express statutory prohibition or substantial countervailing policies." United States v. Euge, 444 U.S. 707, 711 (1980). (Emphasis supplied.) Petitioners have clearly shown such substantial countervailing policies.

Furthermore, the petitioners' argument in regard to the relief requested should this Court grant the petition and decide in favor of the petitioners has been distorted. First, the government stated that "petitioners claim that the reports should be protected by a qualified accountant's privilege" and proceeded to explain why such a privilege is unfounded. Br. In Opp. at 11. The petitioners never stated that the IARs should be protected by a qualified accountant's privilege. 5/ Indeed, petitioners consciously refrained from taking any such position, because this Court can grant the petition and rule on the case without extending any qualified accountant's privilege

5/ Such an egregious misstatement not only fails to respond to the petitioner's policy argument, but casts an aspersion on the credibility of the government's analysis.

to cover IARs. 6/ To suggest that petitioners claim a qualified accountant's privilege serves only to obscure the policy issue, which the government chose to do rather than respond to it directly.

Second, it is stated that "petitioners contend" that the district courts be "required" to have in camera inspections of the summoned documents. Br. In Opp. at 9, n. 5. Again, the petitioners never stated that this Court should "require" district courts to have in camera inspections. Petitioners instead stated that the trial court "should be required to balance" the IRS's need for the documents against the taxpayer's need for

6/ Petitioners merely request that the Court grant the petition and rule that in order for the IRS to obtain IARs it must have a reasonable expectation that the IARs are relevant to the tax audit balanced against the need for confidentiality of IARs. See Pet. at 28-30. In so doing the Court need not address the qualified accountant's privilege.

confidentiality. This balance could be struck on the basis of questions by the trial judge (or counsel) directed to determining the general subjects covered by the IARs and the extent of the need of the IRS and the likely relevance of the IARs. Moreover, it "may readily be struck" by in camera procedures. Pet. at 22, 24. Petitioners' assertion stands that in camera review of Leaseway's IARs is an easy practical solution to the dispute in this case.

For the foregoing reasons, as well as for the reasons stated in the petition, the Petition for a Writ of Certiorari to the

United States Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

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